



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/08/01	Bill No:	AB 1291
Tax:	Sales and Use	Author:	Hollingsworth
Board Position:		Related Bills:	AB 5 (2000) AB 13 (2000)

BILL SUMMARY

This bill would provide a sales and use tax exemption for sales and purchases of baby diapers, as specified.

ANALYSIS

Current Law

Under existing law, sales or use tax applies to all sales or purchases of tangible personal property, unless otherwise exempted or excluded from the computation of sales or use tax.

Existing law provides a number of exemptions and/or exclusions from the sales and use tax. For example, the sales and use tax law contains the following exemptions for “necessities of life”:

- food for consumption at home (Section 6359)
- prescription medicines (Section 6369)
- gas, electricity and water (Section 6353)
- “food” animals, such as cows, pigs and chickens, and “food” plants, such as asparagus, nut trees, and strawberry plants (Section 6358)

Current law does not provide an exemption for diapers, whether disposable or not. However, persons engaged in providing diaper services, where cloth diapers are furnished in connection with the recurring service of laundering the diapers, are regarded as consumers of the diapers they provide in their service and tax applies only to the diaper service’s purchase price of the diapers. The service’s receipts from the rental of the diapers in connection with the service he or she provides are not subject to sales or use tax (Section 6006 (g)(2)).

Proposed Law

This bill would add Section 6364.1 to the Sales and Use Tax Law to provide a sales and use tax exemption for sales and purchases of diapers designed, manufactured, processed, fabricated, or packaged for use by infants and toddlers.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

The bill would become operative on the first day of the calendar quarter commencing more than 90 days from the date the bill is enacted.

Background

During the 1999 Legislative Session, two measures that would have provided an exemption for diapers (and over-the-counter medicines) were introduced. Both measures, AB 5 (Battin) and AB 13 (Dickerson) died in the Assembly Revenue and Taxation Committee. The Board had a “neutral” position on both bills.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author, who believes diapers are essentially necessities of life and the price of these items should not be increased through the application of sales and use tax.
2. **The May 8, 2001 amendments delete references to baby formula.** Since the law already exempts sales and purchases of baby formula and formula products from the tax, the amendments delete the reference to formula products in the language of the proposed exemption.
3. **Daycare providers, diaper service providers, and hospitals would additionally benefit from the proposed exemption for diapers.** Since sales of diapers to these service enterprises are currently subject to tax, this bill would provide an additional benefit to these entities by exempting their purchases of diapers used in their operations.

COST ESTIMATE

Some costs would be incurred in providing notices to affected retailers, auditing claimed exemptions, amending regulations, and training Board staff. These costs are expected to be absorbable.

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REVENUE ESTIMATE

Background, Methodology, and Assumptions

According to the disposable diaper industry, national sales of disposable baby diapers amounted to \$4.3 billion in 2000. Sales of these items have grown slightly over the past five years, but have remained constant for the last two. Assuming that California represents 12 percent of this total, (California represents 12 percent of the nation's population) California annual sales are estimated to be \$516 million.

The use of nondisposable baby diapers has diminished since the introduction of disposable diapers. However, environmental and health concerns have persuaded many parents to use cotton cloth diapers. In 1996, the *Chicago Tribune* reported that, according to research done by Proctor and Gamble, "81 percent of the hospitals in the United States use disposable diapers, and 94 percent of all parents rely solely on disposable diapers." A study by Ohio State University reported that "Disposable diapers now dominate the market, accounting for 80 percent of the diapers used in the United States." For this estimate, we will assume that 10 percent of the diapers used in California are nondisposable cloth diapers.

According to the U.S. Census, it is estimated for the year 2000, there were about 1.67 million Californians under the age of two and a half, the age at which most babies using nondisposable diapers are toilet trained. The number of births in California has declined since 1990. We estimate that 10 percent of these babies (167,000) use nondisposable diapers. The cost of nondisposable cloth diapers range from \$10 per dozen to \$100 per dozen. On average, parents purchase 4 dozen cloth diapers. We estimate the average yearly cost for cloth diapers to be \$32 (\$20 per dozen x 4 dozen = \$80 total cost divided by 2.5 = \$32 per year). Not all cloth diaper users purchase and home launder these diapers. Many use a diaper service that delivers freshly laundered diapers weekly and take the soiled diapers to launder. While the diaper services probably pay less for diapers, they supply more than 4 dozen for each customer. The estimated yearly cost of \$32 for cloth diapers includes both diaper services and home laundered diapers. Estimated sales of cloth diapers in California are \$5.3 million annually (167,000 users x \$32 = \$5.3 million).

Total sales of baby diapers in California are estimated to be \$521.3 million (\$516 million for disposable diapers + \$5.3 million for nondisposable diapers).

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Revenue Summary

The annual revenue loss from exempting \$521.3 million in diaper sales from the sales and use tax would be as follows:

Revenue Loss	
State loss (5%)*	\$26.1 million
Local loss (2.25%)	11.7 million
Special District loss (0.67%)	<u>3.5 million</u>
Total	<u>\$ 41.3 million</u>

* While the state tax rate is 4.75 percent for calendar year 2001, it is assumed the tax rate will return to 5.0 percent in 2002.

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